

ORIGINAL

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2 SCOTTLINN J HUBBARD, IV, SBN 212970
3 **DISABLED ADVOCACY GROUP, APLC**
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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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13 BARBARA HUBBARD,

14 Plaintiff,

15 vs.

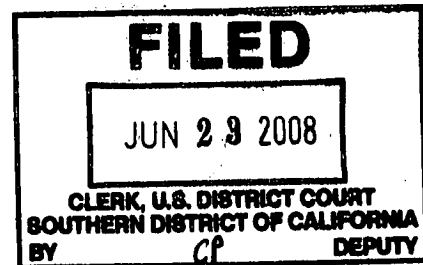
16 JILL LINDSTEDT dba
17 McDONALD'S #1557;
18 McDONALD'S CORP.,

19 Defendants.

No. '08 CV 1110 DMS BLM

Plaintiff's Complaint

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Hubbard v. Lindstedt, et al.
Plaintiff's Complaint



CR

1 I. SUMMARY

2 1. This is a civil rights action by plaintiff Barbara Hubbard
3 (“Hubbard”) for discrimination at the building, structure, facility, complex,
4 property, land, development, and/or surrounding business complex known as:

5 McDonald’s #1557
6 1110 3rd Avenue
7 Chula Vista, CA 91911
8 (hereafter “the Restaurant”)

9 2. Hubbard seeks damages, injunctive and declaratory relief, attorney
10 fees and costs, against Jill Lindstedt dba McDonald’s #1557 and McDonald’s
11 Corp. (hereinafter collectively referred to as “McDonald’s”) pursuant to the
12 Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and
13 related California statutes.

14 II. JURISDICTION

15 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and
16 1343 for ADA claims.

17 4. Supplemental jurisdiction for claims brought under parallel
18 California law—arising from the same nucleus of operative facts—is predicated
19 on 28 U.S.C. § 1367.

20 5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

21 III. VENUE

22 6. All actions complained of herein take place within the jurisdiction
23 of the United States District Court, Southern District of California, and venue is
24 invoked pursuant to 28 U.S.C. § 1391(b), (c).

25 IV. PARTIES

26 7. McDonald’s owns, operates, and/or leases the Restaurant, and
27 consists of a person (or persons), firm, and/or corporation.

1 8. Hubbard has multiple conditions that affect one or more major life
2 functions. She requires the use of motorized wheelchair and a mobility-equipped
3 vehicle, when traveling about in public. Consequently, Hubbard is “physically
4 disabled,” as defined by all applicable California and United States laws, and a
5 member of the public whose rights are protected by these laws.

6 V. FACTS

7 9. The Restaurant is an establishment serving food and drink, open to
8 the public, which is intended for nonresidential use and whose operation affects
9 commerce.

10 10. Hubbard visited the Restaurant and encountered barriers (both
11 physical and intangible) that interfered with—if not outright denied—her ability
12 to use and enjoy the goods, services, privileges, and accommodations offered at
13 the facility. To the extent known by Hubbard, the barriers at the Restaurant
14 included, but are not limited to, the following:

- 15 • There is no tow away signage posted and/or the tow away signage posted
16 is not correct;
- 17 • There is no accessible route from the public way to the Restaurant;
- 18 • The disabled parking spaces are too short;
- 19 • The disabled parking spaces have slopes and cross slopes that exceed
20 2.0%;
- 21 • The adjacent access aisles have slopes and cross slopes that exceed 2.0%;
- 22 • The signage provided in the van accessible space is not correct;
- 23 • The International Symbol of Accessibility (hereinafter referred to as
24 “ISA”) mounted at one of the entrance doors is not located on the strike
25 side and at 60 inches center from the floor;
- 26 • At least one entrance door is lacking an ISA to indicate that the Restaurant
27 is accessible to the disabled;

- 1 • The food service counter is too high and does not have a portion lowered
- 2 to accommodate patrons in wheelchairs;
- 3 • The pay point machines are mounted too high;
- 4 • There is no seating designated as accessible to the disabled inside the
- 5 Restaurant;
- 6 • There is no disabled seating inside the Restaurant;
- 7 • There is not seating designated as accessible to the disabled in the outdoor
- 8 play area;
- 9 • There is no accessible seating in the outdoor play area;
- 10 • The stall door is not self closing;
- 11 • The stall door hardware requires pinching, grasping, and/or twisting to
- 12 operate;
- 13 • The flush valve of the water closet is located on the wrong side;
- 14 • The water closet is an obstruction to the use of the disposable seat cover
- 15 dispenser;
- 16 • The disposable seat cover dispenser is mounted behind the water closet
- 17 and is therefore out of the required reach range limits;
- 18 • The disposable seat cover dispenser is mounted at more than 40 inches
- 19 from the floor;
- 20 • The toilet tissue dispenser is mounted above the grab bar and is more than
- 21 12 inches from the front of the water closet;
- 22 • The toilet tissue dispenser is an obstruction to the use of the side grab bar;
- 23 • The side grab bar is not mounted 12 inches from the back wall
- 24 • The pipes underneath the lavatory are improperly and/or incompletely
- 25 wrapped;
- 26 • The mirror is mounted more than 40 inches from the floor; and,
- 27 • When exiting the restroom, there is not the required 18 inches of strike
- 28 side clearance.

1 These barriers prevented Hubbard from enjoying full and equal access.

2 11. Hubbard was also deterred from visiting the Restaurant because she
3 knew that the Restaurant's goods, services, facilities, privileges, advantages, and
4 accommodations were unavailable to physically disabled patrons (such as
5 herself). She continues to be deterred from visiting the Restaurant because of the
6 future threats of injury created by these barriers.

7 12. Hubbard also encountered barriers at the Restaurant, which violate
8 state and federal law, but were unrelated to her disability. Nothing within this
9 Complaint, however, should be construed as an allegation that Hubbard is
10 seeking to remove barriers unrelated to her disability.

11 13. McDonald's knew that these elements and areas of the Restaurant
12 were inaccessible, violate state and federal law, and interfere with (or deny)
13 access to the physically disabled. Moreover, McDonald's has the financial
14 resources to remove these barriers from the Restaurant (without much difficulty
15 or expense), and make the facility accessible to the physically disabled. To date,
16 however, McDonald's refuses to either remove those barriers or seek an
17 unreasonable hardship exemption to excuse non-compliance.

18 14. At all relevant times, McDonald's has possessed and enjoyed
19 sufficient control and authority to modify the Restaurant to remove impediments
20 to wheelchair access and to comply with the Americans with Disabilities Act
21 Accessibility Guidelines and Title 24 regulations. McDonald's has not removed
22 such impediments and has not modified the Restaurant to conform to
23 accessibility standards. McDonald's has intentionally maintained the Restaurant
24 in its current condition and has intentionally refrained from altering the
25 Restaurant so that it complies with the accessibility standards.

1 Failure to Remove Architectural Barriers in an Existing Facility

2 19. The ADA specifically prohibits failing to remove architectural
3 barriers, which are structural in nature, in existing facilities where such removal
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
5 achievable” is defined as “easily accomplishable and able to be carried out
6 without much difficulty or expense.” Id. § 12181(9).

7 20. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also specifically
10 prohibited if these methods are readily achievable. Id. § 12182(b)(2)(A)(v).

11 21. Here, Hubbard alleges that McDonald’s can easily remove the
12 architectural barriers at the Restaurant without much difficulty or expense, and
13 that McDonald’s violated the ADA by failing to remove those barriers, when it
14 was readily achievable to do so.

15 22. In the alternative, if it was not “readily achievable” for McDonald’s
16 to remove the Restaurant’s barriers, then McDonald’s violated the ADA by
17 failing to make the required services available through alternative methods,
18 which are readily achievable.

19 Failure to Design and Construct an Accessible Facility

20 23. On information and belief, the Restaurant was designed or
21 constructed (or both) after January 26, 1992—independently triggering access
22 requirements under Title III of the ADA.

23 24. The ADA also prohibits designing and constructing facilities for
24 first occupancy after January 26, 1993, that aren’t readily accessible to, and
25 usable by, individuals with disabilities when it was structurally practicable to do
26 so. 42 U.S.C. § 12183(a)(1).

27 25. Here, McDonald’s violated the ADA by designing or constructing
28 (or both) the Restaurant in a manner that was not readily accessible to the

1 physically disabled public—including Hubbard—when it was structurally
2 practical to do so.³

3 Failure to Make an Altered Facility Accessible

4 26. On information and belief, the Restaurant was modified after
5 January 26, 1992, independently triggering access requirements under the ADA.

6 27. The ADA also requires that facilities altered in a manner that affects
7 (or could affect) its usability must be made readily accessible to individuals with
8 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
9 an area that contains a facility's primary function also requires adding making
10 the paths of travel, bathrooms, telephones, and drinking fountains serving that
11 area accessible to the maximum extent feasible. *Id.*

12 28. Here, McDonald's altered the Restaurant in a manner that violated
13 the ADA and was not readily accessible to the physically disabled public—
14 including Hubbard—to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 29. The ADA also requires reasonable modifications in policies,
17 practices, or procedures, when necessary to afford such goods, services,
18 facilities, or accommodations to individuals with disabilities, unless the entity
19 can demonstrate that making such modifications would fundamentally alter their
20 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 30. Here, McDonald's violated the ADA by failing to make reasonable
22 modifications in policies, practices, or procedures at the Restaurant, when these
23 modifications were necessary to afford (and would not fundamentally alter the
24 nature of) these goods, services, facilities, or accommodations.

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28 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 thousand dollars (\$1,000), declaratory relief, and any other remedy available
2 under California Civil Code § 54.3.

3 39. She also seeks to enjoin McDonald's from violating the Disabled
4 Persons Act (and ADA) under California Civil Code § 55, and to recover
5 reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and
6 55.

7 VIII. THIRD CLAIM

8 Unruh Civil Rights Act

9 40. Hubbard incorporates the allegations contained in paragraphs 1
10 through 30 for this claim.

11 41. California Civil Code § 51 states, in part, that: All persons within
12 the jurisdiction of this state are entitled to the full and equal accommodations,
13 advantages, facilities, privileges, or services in all business establishments of
14 every kind whatsoever.

15 42. California Civil Code § 51.5 also states, in part, that: No business
16 establishment of any kind whatsoever shall discriminate against any person in
17 this state because of the disability of the person.

18 43. California Civil Code § 51(f) specifically incorporates (by
19 reference) an individual's rights under the ADA into the Unruh Act.

20 44. McDonald's aforementioned acts and omissions denied the
21 physically disabled public—including Hubbard—full and equal
22 accommodations, advantages, facilities, privileges and services in a business
23 establishment (because of their physical disability).

24 45. These acts and omissions (including the ones that violate the ADA)
25 denied, aided or incited a denial, or discriminated against Hubbard by violating
26 the Unruh Act.

27 46. Hubbard was damaged by McDonald's wrongful conduct, and seeks
28 statutory minimum damages of four thousand dollars (\$4,000) for each offense.

1 47. Hubbard also seeks to enjoin McDonald's from violating the Unruh
2 Act (and ADA), and recover reasonable attorneys' fees and costs incurred under
3 California Civil Code § 52(a).

4 IX. FOURTH CLAIM

5 **Denial of Full and Equal Access to Public Facilities**

6 48. Hubbard incorporates the allegations contained in paragraphs 1
7 through 13 for this claim.

8 49. Health and Safety Code § 19955(a) states, in part, that: California
9 public accommodations or facilities (built with private funds) shall adhere to the
10 provisions of Government Code § 4450.

11 50. Health and Safety Code § 19959 states, in part, that: Every existing
12 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
13 altered or structurally repaired, is required to comply with this chapter.

14 51. Hubbard alleges the Restaurant is a public accommodation
15 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
16 and Safety Code or Government Code § 4450 (or both), and that the Restaurant
17 was not exempt under Health and Safety Code § 19956.

18 52. McDonald's non-compliance with these requirements at the
19 Restaurant aggrieved (or potentially aggrieved) Hubbard and other persons with
20 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees
21 pursuant to Health and Safety Code § 19953.

22 X. PRAYER FOR RELIEF

23 WHEREFORE, Hubbard prays judgment against McDonald's for:

24 1. Injunctive relief, preventive relief, or any other relief the Court deems
25 proper.

26 2. Declaratory relief that McDonald's violated the ADA for the purposes of
27 Unruh Act or Disabled Persons Act damages.

- 1 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
- 2 California Civil Code (but not both) according to proof.
- 3 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 4 5. Interest at the legal rate from the date of the filing of this action.

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6 DATED: June 19, 2008

DISABLED ADVOCACY GROUP, APLC

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9 LYNN HUBBARD, III
10 Attorney for Plaintiff
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⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Lindstedt, et al.
Plaintiff's Complaint

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152184 - TC

**June 23, 2008
15:14:33**

Civ Fil Non-Pris

USAO #.: 08CV1110

Judge.: DANA M SABRAW

Amount.: \$350.00 CC

Total-> \$350.00

FROM: HUBBARD VS LINDSTEDT

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BARBARA HUBBARD

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LYNN HUBBARD, III DISABLED ADVOCACY GROUP, APLC
12 Williamsburg Lane Chico, CA 95926 (530) 895-3252

DEFENDANTS

JILL LINDSTEDT dba McDONALD'S #1557; McDONALD'S CORP.

County of Residence of First Listed Defendant SAN DIEGO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

08 CV 1110 DMS BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:

Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/19/2008

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____